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SEP 20 2004

OFFICE OF PETITIONS

In re Application of :  
Raymond G. Freuler et al :DECISION GRANTING PETITION  
Application No. 09/834,158 :UNDER 37 CFR 1.137(b)  
Filed: April 12, 2001 :  
Atty Docket No. LPD-009/POWRD-014B :

This is a decision on the petition, filed April 5, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition under 37 CFR 1.137(f) is GRANTED.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on March 13, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the USPTO of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
  - (2) the petition fee as set forth in 37 CFR 1.17(m);
- and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of December 30, 2004 has been mailed under separate cover.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due were mailed in this case on February 27, 2004. However, in view of the nonpublication request filed with the application, the Notice of Allowance and Fee(s) Due mailed in this case did not require the submission of a publication fee. Therefore, in view of the rescinding of the nonpublication request and in view of the presence of an authorization to charge any additional fee due submitted with the petition, the \$300 publication fee will be charged to petitioner's deposit account. If publication of the application does not occur, applicant may file a request for a refund after the patent issues.

This matter is being referred to Publishing Division.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680. Effective September 27, 2004, the new phone number will be (571) 272-3218.

  
Frances Hicks

Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy